

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

ANGIE L. N.,¹

Plaintiff,

v.

**COMMISSIONER, SOCIAL SECURITY
ADMINISTRATION,**

Defendant.

Case No. 3:20-cv-00090-IM

**ORDER GRANTING PLAINTIFF'S
UNOPPOSED MOTION FOR
ATTORNEY'S FEES PURSUANT TO
42 U.S.C. § 406(b)**

IMMERGUT, District Judge.

Plaintiff Angie L. N. brought this action seeking review of the Commissioner's final decision denying her application for Title II Disability Insurance Benefits ("DIB") and Title XVI Supplemental Security Income ("SSI") under the Social Security Act. Complaint, ECF 1. On August 18, 2021, this Court reversed the Commissioner's decision and remanded the case for further proceedings. Judgment, ECF 24. Upon remand, Plaintiff received a fully favorable

¹ In the interest of privacy, this opinion uses only the first name and the initial of the last name of the non-governmental party in this case.

decision and the Commissioner found Plaintiff entitled to DIB beginning July 2015. Declaration of Nancy J. Meserow (“Meserow Decl.”), ECF 29-2, Ex. 2.

Plaintiff’s counsel now seeks an award of fees pursuant to 42 U.S.C. § 406(b). Motion for Attorney’s Fees (“Mot.”), ECF 28. The Commissioner has not objected to the amount of the award. *See id.* at 2; Commissioner’s Response (“Resp.”), ECF 31. This Court has reviewed the record in this case, the motion, and the supporting materials, including the award of benefits, the fee agreement with counsel, and the recitation of counsel’s hours and services. Applying the standards set by *Gisbrecht v. Barnhart*, 535 U.S. 789, 807–08 (2002), this Court finds that the total fee award allowed for under § 406(b) and requested by counsel, \$28,600.50, is reasonable.

While the Commissioner does not dispute the amount of the award, he does dispute the wording to be used in this Order. The Commissioner urges this Court to avoid language “directing” the Commissioner to “pay” the attorney’s fees. Resp., ECF 31 at 3–4. At bottom, the Commissioner appears concerned about being liable for attorney’s fees in the event of a shortfall of withheld funds.

The Proposed Order provided by Plaintiff’s counsel, Proposed Order, ECF 28-1, complies with the Commissioner’s request, so this Court substantially adopts the Proposed Order in granting Plaintiff’s Motion.

Plaintiff’s Motion for Attorney’s Fees Pursuant to 42 U.S.C. § 406(b), ECF 28, is hereby GRANTED, and Plaintiff’s counsel is awarded \$28,600.50 in attorney’s fees under 42 U.S.C. § 406(b). Previously, this Court awarded Plaintiff’s counsel \$10,493.24 in fees under the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412(d). Order, ECF 27. Because Plaintiff had delinquent debt at the time this Court awarded EAJA fees, the Department of Treasury applied \$6,601.57 of the fee award to these delinquent debts. Meserow Decl., ECF 29-5, Ex. 5 at 1–2.

The remaining amount of \$3,891.67 was received by Plaintiff's counsel. Meserow Decl., ECF 29 ¶ 5; Meserow Decl., ECF 29-5, Ex. 5 at 1–2. When issuing the § 406(b) check for payment to Plaintiff's attorney, the Commissioner is directed to subtract the amount of EAJA fees previously received² and send Plaintiff's attorney, Nancy J. Meserow, the balance of \$24,708.83, less any applicable processing fee prescribed by law. The § 406(b) check should be mailed to Nancy J. Meserow at the attorney's preferred mailing address of 7540 SW 51st Avenue, Portland, OR 97219. Any amount withheld after all administrative and court attorney's fees are paid should be released to the claimant.

IT IS SO ORDERED.

DATED this 6th day of February, 2024.

/s/ Karin J. Immergut
 Karin J. Immergut
 United States District Judge

² See *Linnan v. Kijakazi*, Case No.: 3:19-cv-00225-LRH-WGC, 2021 WL 4190636, at *5 (D. Nev. Aug. 26, 2021) (explaining that “[s]ome district courts within th[e Ninth] [C]ircuit . . . simply allow the EAJA award to be offset or subtracted from the [§] 406(b) fee award” and collecting cases), *report and recommendation adopted*, 2021 WL 4189607 (D. Nev. Sept. 14, 2021).